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Reflections on Multi-Party Mediation

By Michele Straube¹

Many traditional legal disputes involve multiple parties. Family disputes often involve the two spouses and a multitude of family members. Business disputes can involve multiple partners, suppliers and customers. Disputes relating to construction projects usually include the project proponent, the project designer, as well as multiple contractors and sub-contractors.

These traditional multi-party legal disputes can benefit from mediation, where a neutral third party facilitates the negotiation discussion between the parties, helps the parties find common ground and creates focus out of the potential chaos.

Multi-Party Consensus Building Opportunities

In my line of work, public policy mediation, there are additional opportunities for multi-party consensus-building.

The normal process for all levels of US governments (federal, state and local) to develop new regulations and policies is to work internally to create a proposal, which is then made public for a 30-day to 60-day comment period. Sometimes public hearings are held during the comment period as well. The government then reviews the public comments, makes changes to the proposal (or not), and the final regulation or policy is issued. Those who object to the new regulation or policy often file a legal challenge.

In some situations, government officials have set aside this normal process in lieu of developing new regulations or policies collaboratively with the public. They convene a multi-party group with representatives of the significant stakeholder interests, with the objective of co-creating a policy approach that will satisfy everyone and that will not be challenged in court.

Several years ago, I helped a state environmental agency work with industry and environmental groups to create a program that provided incentives for manufacturing and other facilities to take actions that were more protective of the environment than those required by current regulation. Rather than having the government tell industry what to do, industry and environmental groups together designed a program that could be implemented with community support. Several years later, the program is very successful, with a wide range of large, medium

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and small companies who have developed internal strategies to prevent environmental emissions altogether or reduce them below the legal standards.

Another major opportunity for multi-party consensus-building arises in situations where no one party has adequate resources to fix a problem or get the job done. This is particularly true where the government wants to take action, but needs cooperation and support from other entities to be successful.

I am currently working with a collaborative partnership that came together to remove invasive plant species along 90 miles of a major river in the US southwest. The invasive plants are found on land owned by three different federal government agencies, at least one state agency and many private landowners. The invasive plants are so thick and difficult to kill, that it can take a 7-person crew a full week to clear a small section of river bank. In addition, no-one has attempted to conduct an invasive plant removal project at this large scale and the methods for doing so are untested. The partnership initiated a multi-year, multi-party, consensus-building process to jointly design a successful plant removal project, and to find the resources to implement the full project. The group's ongoing discussions require active organization and mediation.

Before the Multi-Party Mediation Starts

Having multiple parties involved in a dispute or a mediation obviously creates greater complexity than is found in two-party disputes. More people, more issues, more emotion, more potential for confusion and impasse. It's hard to know which topic to talk about first. You may or may not have the right people involved in the conversation. These are only a few of the potential complexities.

Whenever possible, I recommend that the mediator conduct some type of situation assessment *before* the multiple parties have their first meeting to ensure that the negotiations will be productive. A situation assessment usually involves the mediator having confidential interviews with as many people as possible who may have relevant information about the subject of the dispute.

Using the information learned during the assessment interviews, the mediator can then design a process that has the greatest likelihood of success. A successful multi-party process will probably include:

- A representative from each entity that has decision-making authority. Ideally the person who will have to make the decision will be at the negotiating table, but if that is not possible, that person needs to be kept fully informed about the progress of the negotiation.
- A representative from each entity that will have to implement any consensus solutions.

- A representative from all entities that have the power to block final implementation of any consensus solutions. This can include organizations or individuals who might file a legal challenge, and/or organizations or individuals who have political or community power to change the final result.
- Additional organizations or individuals who have relevant data to provide to the group.

The situation assessment report will also identify the issues that are of concern to the various stakeholder interests, as well as the opportunities the mediator sees for mutual gain.

Nurturing the Consensus-Building Process

Designing and managing a multi-party consensus-building process is as much an art as a science. There are, however, three approaches that I have found particularly effective.

First, the mediator should help the parties understand what “consensus” means and continually work with them to strive for “consensus”. As I use the term, a “consensus” agreement is one that all parties can live with and are willing to implement. No-one loves it, no-one hates it, but everyone is willing to sign it and support it.

In the multi-party processes that I mediate, I encourage the parties to agree in the first meeting that everyone will share responsibility for finding solutions that will meet everyone’s needs. Just as no one person can dictate the decision for the others, no one person has veto power. Likewise, no person can simply state that they don’t like a potential solution without offering another suggestion that they think *might* be satisfactory to everyone. This approach to consensus encourages everyone to fully understand all the perspectives in the room, and promotes creative problem-solving. It is time-consuming, but the results are often unexpected and effective.

Second, the mediator needs to allow adequate time for the parties to learn from each other, and in some cases, to learn together. With encouragement to keep an open mind, the parties should share their perspectives with each other and ask questions to ensure full understanding. In many of the projects on which I work, the group starts by sharing the relevant information each party already knows about the underlying issue. The group members then ask themselves if there is any information they need, but have not yet shared. If so, they work together to find the new information or even to create it (e.g., taking scientific samples together). The side benefit of spending time to learn together is that it models collaboration in a relatively stress-free activity, and it encourages the parties to think about the issues from multiple angles.

Finally, the group can be encouraged to create a future vision or joint goal that can serve as an anchor for the upcoming give-and-take of negotiations. In one of my projects, local ranchers and environmental groups agreed on desired future conditions for the land under discussion (what measures would reflect a “healthy” landscape), from which they were able to reach agreement on the changes in grazing practices that would allow the land to recover from over-grazing. In another project, local residents, community groups and groups that provide services to homeless people agreed on their future vision for a local park, which then informed the actions they jointly took to change the use of the park to make that vision come true. As a final example, oil and gas exploration companies and environmental groups agreed in principle that critical animal habitat should be protected, which helped them decide where to place oil wells (and where not to place them).

Multi-party mediations or collaborations are not easy, but the process of bringing multiple parties with diverse interests to consensus can be magical.

Case studies of multi-party consensus-building processes can be found at these websites:

- US Institute for Environmental Conflict Resolution, (<http://www.ecr.gov/Projects/Projects.aspx>)
- Consensus Building Institute (<http://cbuilding.org/case-studies>)
- Policy Consensus Initiative, National Policy Consensus Center (<http://www.policyconsensus.org/casestudies/index.html>)